F. M. S.

[APPELLATE CRIMINAL JURISDICTION]
THOMAS, C.J., GERAHTY & McFALL, JJ.
December 6, 1933.

PUBLIC PROSECUTOR.....Appellant.
v.
ABDUL HAMID BIN JAMAL.....Respondent.
[PERAK CRIMINAL APPEAL No. 18 of 1933]

Extradition Enactment, 1914, ss.9 and 10—Nature of proceedings—Rearrest after direction for release—Power to take further proceedings for extradition after an order for discharge.

Where proceedings for extradition have resulted in an order for the discharge of a fugitive criminal made either by the Magistrate before whom such fugitive criminal is brought, or by the Court of a Judge to whom a subsequent application for his release has been made, such discharge is equivalent to an order for discharge made by a Magistrate at a Preliminary Enquiry under Chapter XVII of the Criminal Procedure Code and does not bar further proceedings for the extradition of the fugitive criminal. No question either of *Res Judicata* or *Autrefois Acquit* arises through the previous order for discharge.

Proceedings for extradition are criminal matters. Decision of Mudie, J. reversed.

R. C. Cussen, Deputy Legal Adviser, for Appellant.

T. M. S. O. Mahendran for Respondent.

THOMAS, C. J. delivered the following oral judgment, as follows, **GERAHTY** and **McFALL, JJ.** concurring:

This is an appeal by the Public Prosecutor of the Federated Malay States from the decision of Mudie, J. ordering the respondent, Abdul Hamid, to be discharged from custody and to be set at liberty.

The facts are that the Government of the Netherlands required the extradition of the respondent with reference to a criminal charge of embezzlement. Evidence led before the Magistrate was only as to the arrest of the respondent, and the respondent was committed to prison to await the British Resident's decision. Subsequently an application was made to Hereford, J for the respondent to be set at liberty; that application was not opposed, and the respondent was accordingly discharged.

Later a fresh application was made for the detention of the respondent and thereon a committal order was made. At this hearing the respondent objected that he had already been released.

Then followed an application to the Supreme Court for his release. The application came before Mudie, J. who held that the matter was *res judicata* owing to the previous proceedings. He accordingly ordered that the respondent should be set at liberty.

The appeal has been filed by the Public Prosecutor himself on the ground that the learned Judge was wrong in holding that the matter was already *res judicata*.

Enactment No. 26 of 1914 deals with matters relating to extradition. By section 9(i) of that Enactment provision is made that when a fugitive criminal is brought before a Magistrate, the Magistrate shall hear the case in the same manner and have the same power as if the prisoner were brought before him accused of an offence committed within his jurisdiction and triable by the Supreme Court.

The powers of the Magistrate are, therefore, those contained in Chapter XVII of the Criminal Procedure Code. The Magistrate is thereby empowered to commit or discharge; he does not try the accused person so as to say whether he is guilty or not guilty.

Proceedings for extradition are clearly criminal matters. In his judgment in the case of *Exparte Alice Woodhall*, 20 Q.B.D. at page 838, Bowen, L. J. says:—

> "How can the matter be other than criminal from first to last? It is a matter to be dealt with from first to last by persons conversant with criminal law, and competent to denote what is sufficient evidence to justify a committal."

The application to Hereford, J. was to have an order for committal discharged. The effect of the order of Hereford, J. was no more than if the Magistrate in the first instance had discharged the respondent. It was not a trial; it did not involve a verdict of guilty or not guilty.

Where an accused person has been discharged by a Magistrate in respect of a charge triable by the Supreme Court, a fresh complaint may be made (see Dinesh Chandra Roy's Criminal Procedure, pages 994-996).

The respondent was not, therefore, entitled to enter a plea of *autrefois acquit*, and the matter was not *res judicata*. The order of Mudie, J. must therefore be set aside and the order of the committing Magistrate must be reinstated.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]
BURTON, J.
February 3, 1934.

J. K. R. LEONARD.....Chargee.
vs.
K. ARUMUGAM.....Chargor.
[NEGRI SEMBILAN ORIGINATING SUMMONS No. 83 of 1932]

The Land Code, 1926—The Civil Procedure Code, 1918—Order for sale of charged land—Extent to which provisions of the Civil Procedure Code are applicable.

On the 19th day of September, 1932, the Court ordered the sale of charged land pursuant to Section 149 of the "Land Code, 1926." Pursuant to such order the land